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Matters for consideration or action by the Conference of the Parties: operation of the financial mechanism: Global Environment Facility

Update on matters related to the Global Environment Facility Trust Fund

Note by the secretariat

1. In paragraph 5 of article 13, on the financial resources and mechanism, the Minamata Convention on Mercury defines a mechanism for the provision of adequate, predictable and timely financial resources to support developing-country parties and parties with economies in transition in implementing their obligations under the Convention. According to the Convention, the mechanism should include the Global Environment Facility Trust Fund and a specific international programme to support capacity-building and technical assistance.

2. The present note outlines matters with regard to the first entity[1] of the financial mechanism, namely the Global Environment Facility (GEF) Trust Fund, and is to be considered closely with the report of the Council of the Global Environment Facility to the Conference of the Parties to the Minamata Convention at its second meeting (UNEP/MC/COP.2/INF.3, annex). The executive summary of the report is reproduced in annex I to the present note. The annex is presented as received, without formal editing.

1. Global Environment Facility programming on mercury

3. GEF has provided programming support on mercury since the fifth replenishment period for the GEF Trust Fund. The GEF Council's report provides an account of GEF support to the Minamata Convention over the sixth GEF replenishment period: up to June 2018, GEF had provided support for a total of 110 countries to develop their Minamata Convention initial assessments and 32 countries to prepare their artisanal and small-scale gold mining national action plans. The report also gives an overview of the seventh GEF replenishment as concluded in April 2018 and endorsed by the GEF Council at its fifty-fourth meeting in June 2018.

4. The participants in the seventh replenishment of the GEF Trust Fund indicatively allocated $599 million to the chemicals and waste focal area, an amount representing 15 per cent of the total replenishment envelope. The amount of $206 million was indicatively allocated for mercury programming, significantly more than the sixth GEF replenishment figure of $141 million.

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* UNEP/MC/COP.2/1.

[1] UNEP/MC/COP.2/9 outlines matters relating to the second entity of the financial mechanism, namely the Specific International Programme to Support Capacity-building and Technical Assistance.

2. Cooperation between the secretariat of the Global Environment Facility and the secretariat of the Minamata Convention on Mercury

5. The Chief Executive Officer of GEF led a GEF secretariat delegation at the first meeting of the Conference of the Parties to the Minamata Convention, where she also participated in the high-level panel and hosted a high-level event on the GEF Global Opportunities for Long-term Development of the Artisanal and Small-scale Gold Mining Sector programme.

6. Building on the close cooperation developed between the GEF secretariat and the interim secretariat of the Minamata Convention following the adoption of the Convention in 2013, the GEF secretariat and the secretariat of the Minamata Convention have continued to work closely together since the first meeting of the Conference of the Parties.

7. The principal coordinator of the interim secretariat attended the fifty-third meeting of the GEF Council, held in Washington, D.C., in November 2017, and addressed the Council on the outcomes of the first meeting of the Conference of the Parties. A senior representative of the secretariat also participated in the dialogue with multilateral environmental agreement secretariats held during the meeting. The Executive Secretary attended the fifty-fourth meeting of the GEF Council and sixth meeting of the GEF Assembly, held in Viet Nam in June 2018. She addressed the Council during the session on relations with the multilateral environmental agreements and the Assembly in plenary. She was also able to address a number of the constituency meetings preceding the Council meeting. She participated in the round table on chemicals and waste and the side event on the GEF Global Opportunities for Long-term Development of the Artisanal and Small-scale Gold Mining Sector programme. The Executive Secretary and a senior representative of the secretariat also participated in the regular chemicals and waste task force meeting organized by the GEF secretariat. The Executive Secretary and a senior representative of the secretariat also met with the Chair of the Scientific and Technical Advisory Panel and her senior staff and with the GEF Indigenous Peoples Advisory Group.

8. In relation to making information on the various projects funded by GEF for the implementation of the Minamata Convention publicly available, the secretariat of the Minamata Convention makes an online searchable project database available on its website.[2] Information on many GEF-funded projects related to the Convention is already accessible and the database will be expanded as project reports become available, including those for completed enabling activities. The secretariat has also been requested by the GEF secretariat to host the database of all Minamata Convention initial assessments and associated data.

3. Guidance to the Global Environment Facility on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources, and on an indicative list of categories of activities that could receive support from the Global Environment Facility Trust Fund

9. Paragraph 7 of article 13 of the Convention stipulates that the GEF Trust Fund is to provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of the Convention, as agreed by the Conference of the Parties. It is to provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities. Paragraph 7 further stipulates that for the purposes of the Convention, the GEF Trust Fund is to be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties is to provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources, as well as on an indicative list of categories of activities that could receive support from the GEF Trust Fund.

10. At its first meeting, the Conference of the Parties adopted decision MC-1/5 on guidance to GEF. The annex to the decision sets out guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources and on an indicative list of categories of activities that could receive support from the GEF Trust Fund.

11. The secretariat forwarded the adopted guidance to the GEF Council, as requested by the Conference of Parties, through the GEF secretariat. The GEF Council took note of the guidance at its fifty-third meeting, in November 2017, and has provided a response in its report to the Conference of the Parties at its second meeting (UNEP/MC/COP.2/INF3, annex).

[2] http://www.mercuryconvention.org/Implementation/Projectsdatabase.

4. Draft memorandum of understanding between the Conference of the Parties to the Minamata Convention and the Council of the Global Environment Facility

12. In paragraph 2 of its resolution on financial arrangements of the Convention, the Conference of Plenipotentiaries on the Minamata Convention on Mercury, which met in Kumamoto and adopted the Convention, decided that the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury should develop a draft memorandum of understanding between the Conference of the Parties and the GEF Council on arrangements to give effect to the relevant provisions of paragraphs 5 to 8 of article 13, for consideration by the Conference of Parties at its first meeting. The draft memorandum of understanding was subsequently developed, agreed to on a provisional basis during the final session of the intergovernmental negotiating committee in March 2016 and sent to the GEF Council for its final consideration. The GEF Council considered the draft memorandum of understanding at its fifty-first meeting and directed the GEF Secretariat to transmit it, along with any comments from the Council, to the Conference of the Parties. The draft memorandum of understanding was presented to the Conference of the Parties at its first meeting for its consideration.

13. During the consideration of the matter by the Conference of the Parties, one representative, speaking on behalf of a group of countries, proposed adopting the draft memorandum of understanding, noting that it had been approved by the intergovernmental negotiating committee. Supporting the proposal, another representative noted that the memorandum was not legally binding and had been discussed in detail. Yet another representative said that additional discussions were required and proposed specific amendments. The Conference of the Parties deliberated further on the matter during the meeting and subsequently agreed to defer further consideration of the matter to its second meeting.

14. The GEF Council subsequently noted the matter of the draft memorandum at its fifty-third meeting, in November 2017. At that meeting, the GEF legal counsel noted that, according to the Instrument for the Establishment of the Restructured Global Environment Facility, as amended by the Fifth GEF Assembly in May 2014, GEF was to operate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury, and to operate under the guidance of and be accountable to the Conference of the Parties. The GEF legal counsel also noted that a memorandum of understanding was not a strict prerequisite for GEF to fulfil its role as part of the financial mechanism for the Convention.[3]

15. Subsequent to the first meeting of the Conference of the Parties, the matter of the draft memorandum of understanding was also considered by the principal legal advisor of the United Nations Environment Programme, who noted that while there was no express requirement under the Convention that a memorandum of understanding be concluded between the Conference of the Parties and the GEF Council, it was for the Conference of the Parties to decide whether such a memorandum was necessary. As such, the matter remains open for the Conference of the Parties to consider.

16. While the memorandum of understanding is not legally binding, the Conference of the Parties and the GEF Council may consider it useful to have a memorandum of understanding to provide for administratively sound, substantive collaboration between them in the long term. In this regard, it should be noted that in addition to the standard subheadings (e.g., definitions, purpose, amendments, interpretation, entry into force and termination), the draft memorandum of understanding contains subheadings on guidance from the Conference of the Parties, conformity with guidance from the Conference of the Parties, reporting, monitoring and evaluation, cooperation between the secretariats and reciprocal representation.

5. Review of the financial mechanism of the Minamata Convention on Mercury

17. Paragraph 11 of article 13 of the Convention stipulates that the Conference of the Parties is to review, no later than at its third meeting and thereafter on a regular basis, the level of funding, the guidance provided by the Conference of the Parties to the entities entrusted to operationalize the mechanism, the effectiveness of those entities and their ability to address the changing needs of developing-country parties and parties with economies in transition. Based on its review, the Conference of the Parties is to take appropriate action to improve the effectiveness of the financial mechanism.

[3] See para. 33 of "Highlights of the Council's discussions" at http://www.thegef.org/sites/default/files/council-meeting-documents/HIGHLIGHTS_53rd_Council_Meeting.pdf.

Suggested action by the Conference of the Parties

18. The Conference of Parties may wish to consider the draft memorandum of understanding as presented at its first meeting (UNEP/MC/COP.1/15, annex) and as reproduced in annex II to the present note.

19. In the light of the requirement in the Convention that the Conference of the Parties review the financial mechanism established under article 13 no later than at its third meeting, the Conference of the Parties may wish to identify at its second meeting how the GEF Trust Fund component of that review might be undertaken and the information required for such a review, and to request GEF, the secretariat of the Minamata Convention and others, as necessary, to provide the information required for consideration of the matter at its third meeting.

20. Furthermore, the Conference of the Parties may wish to include in the above-mentioned review consideration of the memorandum of understanding, if the matter is not resolved at the second meeting.

21. The Conference of the Parties may also wish to discuss how to assess whether it needs to prepare additional guidance as input to the consideration of the eighth GEF replenishment in 2021.

Annex I

Executive summary of the report of the Council of the Global Environment Facility to the Conference of the Parties to the Minamata Convention on Mercury, as submitted by the secretariat of the Global Environment Facility

1. Executive summary of the Report of the Global Environment Facility to the Second meeting of the Conference of the Parties to the Minamata Convention on Mercury, as submitted by the Secretariat of the Global Environment Facility

2. The Minamata Convention on Mercury is the most recent Convention in which the Global Environment Facility (GEF) in included in the Financial Mechanism.

3. The objective of the Convention is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.

4. Article 13 of the Minamata Convention includes the GEF in the Financial Mechanism to provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties.

5. The Minamata Convention was added to the Instrument for the Establishment of the Restructured Global Environment Facility during the Fifth Assembly of the Global Environment Facility in May 2014.

6. This report presents the work of the GEF in fulfilling its mandate under the Minamata Convention between July 1, 2017 and June 30, 2018 and responds to the guidance to the GEF from the first meeting of the Conference of the Parties (COP 1) to the Minamata Convention on Mercury that took place from September 24 to 29, 2017. The guidance is contained in the annex to the Minamata COP decision MC-1/5.

7. The report additionally provides an account of the GEF's support to the Minamata Convention on Mercury over the sixth replenishment period (GEF-6) of July 1, 2014 to June 30, 2018, as well as an overview of the results of the seventh GEF replenishment (GEF-7) process.

8. Since the first COP in September 2017, the GEF has approved two full-sized projects (FSPs) covering seven countries and seven enabling activity projects covering ten countries.

9. The resources committed during the reporting period is $8.25 million.

10. The sixth replenishment of the GEF (GEF-6) committed $554 million of GEF resources for chemicals and waste focal area, of which $141 million was allocated to the implementation of the Minamata Convention.

11. During GEF-6, $148.7 million was programmed to implement the Minamata convention of which $134 million was allocated to countries, $2 million to project preparation and $12.5 million to agency fees.

12. The GEF-6 resources supported 85 countries to conduct Minamata Initial Assessments (MIA), which brings the total number of countries that received MIA support to date to 110.

13. In GEF-6, National Action Plans for Artisanal and Small-Scale Gold Mining (NAP) were also supported, with 32 countries receiving support.

14. Twenty-six (26) countries received support for implementation activities through programmatic approaches, FSP and medium-sized projects in GEF-6.

15. On average, excluding enabling activities, the portfolio leveraged four dollars for every GEF dollar invested from co-financing.

16. The corporate target for mercury reduction in the GEF-6 period was 1,000 metric tons. The Corporate Scorecard presented at the 54th GEF Council meeting in June 2018 showed that the GEF-6 mercury projects approved contributed 638 tons, or 64 percent of the GEF-6 corporate target for mercury reduction.

Annex II

Draft memorandum of understanding between the Conference of the Parties to the Minamata Convention on Mercury and the Council of the Global Environment Facility

The Conference of the Parties to the Minamata Convention on Mercury (hereinafter the "Conference of the Parties") and the Council of the Global Environment Facility (hereinafter the "Council"),

Recalling paragraph 5 of Article 13 of the Convention, which defines a Mechanism for the provision of adequate, predictable and timely financial resources to support developing-country Parties and Parties with economies in transition in implementing their obligations under the Convention, and paragraph 6 of Article 13, which establishes that the Mechanism "shall include the Global Environment Facility Trust Fund; and a specific international Programme to support capacity-building and technical assistance";

Recalling also paragraph 7 of Article 13 of the Convention, which states that the Global Environment Facility Trust Fund "shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties" and that it "shall be operated under the guidance of and be accountable to the Conference of the Parties", which "shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources" as well as "guidance on an indicative list of categories of activities that could receive support from the Global Environment Facility Trust Fund";

Recalling further paragraph 7 of Article 13 of the Convention, which stipulates that the Global Environment Facility Trust Fund "shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities", and paragraph 8 of Article 13, which specifies that in providing resources for an activity, the Global Environment Facility Trust Fund "should take into account the potential mercury reductions of a proposed activity relative to its costs";

Recalling paragraph 6 of the Instrument for the Establishment of the Restructured Global Environment Facility, as amended at the fifth Assembly of the Global Environment Facility, held in May 2014, which provides that the Global Environment Facility will "[o]perate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury…";

Having consulted each other and taking into account the relevant aspects of their governance structures as reflected in their constituent instruments,

Have reached the following understanding:

Definitions

1. For the purpose of the present memorandum of understanding:

(a) "Assembly" means the Assembly of the Global Environment Facility (GEF) as defined in the Instrument for the Establishment of the Restructured Global Environment Facility;

(b) "Conference of the Parties" means the Conference of the Parties to the Minamata Convention on Mercury;

(c) "Convention" means the Minamata Convention on Mercury;

(d) "Council" means the Council of the GEF as defined in the Instrument for the Establishment of the Restructured Global Environment Facility;

(e) "GEF" means the mechanism established by the Instrument for the Establishment of the Restructured Global Environment Facility;

(f) "GEF Instrument" means the Instrument for the Establishment of the Restructured Global Environment Facility;

(g) "Party" means Party to the Minamata Convention on Mercury; and

(h) "Mercury" means the substances covered under the Minamata Convention on Mercury.

Purpose

2. The purpose of the present memorandum of understanding is to make provision for the relationship between the Conference of the Parties and the Council in order to give effect to the provisions relating to the GEF Trust Fund in paragraphs 5, 6, 7, 8, 10 and 11 of Article 13 of the Convention and paragraphs 6, 26 and 27 of the GEF Instrument.

Guidance from the Conference of the Parties

3. The Conference of the Parties will provide GEF with appropriate guidance in accordance with paragraph 7 of Article 13 of the Convention. The guidance will address overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources, as well as an indicative list of categories of activities that could receive support from the GEF Trust Fund. No later than at its third meeting, and thereafter on a regular basis, the Conference of the Parties will review such guidance pursuant to paragraph 11 of Article 13 and may on the basis of such review decide to update or revise it. Subsequently, the Conference of the Parties will agree with GEF upon any additional arrangements beyond the present memorandum of understanding that may be necessary.

Conformity with guidance from the Conference of the Parties

4. The Council will ensure the effective operation of GEF as a source of funding for activities for the purposes of the Convention in conformity with the guidance provided to it by the Conference of the Parties.

5. The Council may raise with the Conference of the Parties any matter arising from the guidance adopted by the Conference of the Parties. In particular, if the Conference of the Parties provides guidance to GEF subsequent to its first meeting, the Council may consult with the Conference of the Parties to update and clarify existing guidance in light of any new or additional guidance that it receives.

6. Funding decisions for specific projects and activities should be agreed between the developing-country Party or the Party with an economy in transition concerned and GEF in accordance with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties. The GEF Council is responsible for approving the GEF work programmes. If a Party considers that a decision of the Council regarding a specific project is not consistent with the guidance provided by the Conference of the Parties in the context of the Convention, and if after consideration the Conference of the Parties decides that the concern of the relevant Party has merit, the Conference of the Parties will seek clarification from GEF and analyse the observations presented to it by the concerned Party and the response by GEF. In the event that the Conference of the Parties considers that the project decision by the GEF Council is not consistent with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties, it may request GEF to propose and implement a course of action to address the concern regarding the project in question.

Reporting

7. In order to meet the requirements of accountability to the Conference of the Parties, the Council will prepare and submit reports for consideration by the Conference of the Parties at each of its ordinary meetings. The reports of the Council will be official documents of the meetings of the Conference of the Parties.

8. The reports of the Council will include information on GEF activities related to the Convention and on the consistency of those activities with the guidance provided by the Conference of the Parties, as well as any decision of the Conference of the Parties communicated to GEF, under Article 13 of the Convention.

9. In particular, the reports will provide:

(a) Information on how GEF has responded to the guidance provided by the Conference of the Parties, including, where appropriate, through the incorporation of the guidance into the strategies and operational policies of GEF;

(b) A synthesis of projects approved by the Council and projects being implemented during the reporting period in relation to mercury, with an indication of GEF and other resources allocated to each such project and the implementation status of each project;

(c) In the case of any project proposal included in a work programme that is not approved by the Council, an explanation of why it was not approved.

10. The Council will also report on GEF monitoring and evaluation activities concerning projects in the chemicals and waste focal area in relation to mercury.

11. The Council will also provide information on other matters concerning the discharge of functions under paragraph 5 of Article 13 as it relates to the GEF Trust Fund as may be requested by the Conference of the Parties. If the Council has difficulties in responding to any such request, it will explain its concerns to the Conference of the Parties, and the Conference of the Parties and the Council will find a mutually acceptable solution.

12. The Council will include in its reports to the Conference of the Parties any views that it may have regarding the guidance provided by the Conference of the Parties.

13. The Conference of the Parties may raise with the Council any matter arising from the reports received from the Council and seek GEF clarification and explanation.

Monitoring and evaluation

14. As provided for in paragraph 11 of Article 13 of the Convention, the Conference of the Parties will review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, the guidance provided by the Conference of the Parties to GEF as one of the two entities entrusted to operationalize the Mechanism established under Article 13, and the effectiveness of GEF and its ability to address the changing needs of developing-country Parties and Parties with economies in transition. The Conference of the Parties shall, based on such review, take appropriate action to improve the effectiveness of the Mechanism.

15. In preparing its review of GEF as one of the two entities of the financial Mechanism under the Convention, the Conference of the Parties will, as appropriate, take into account the reports of the GEF Independent Evaluation Office and the views of GEF. The GEF Independent Evaluation Office will consult, as appropriate, the secretariat of the Convention when preparing evaluations of the activities of GEF related to mercury.

16. The Conference of the Parties will, on the basis of the above-mentioned reviews, communicate to the Council relevant decisions taken by the Conference of the Parties as a result of such reviews to improve the performance and effectiveness of GEF in assisting developing-country Parties and Parties with economies in transition in the implementation of their obligations under the Convention.

Cooperation between secretariats

17. The secretariat of the Convention and the secretariat of GEF will communicate and cooperate with each other and consult on a regular basis to facilitate the effectiveness of GEF in assisting developing-country Parties and Parties with economies in transition to implement their obligations under the Convention.

18. In particular, in accordance with the GEF project cycle the secretariat of the Convention will be invited to comment on the project proposals related to mercury under consideration for inclusion in a proposed work programme, especially with regard to their consistency with the guidance provided by the Conference of the Parties.

19. The secretariats of the Convention and GEF will consult each other on draft texts of documents relevant to both the Convention and GEF prior to issuing the final texts of such documents and take any comments into account in their finalization.

20. Official documentation of GEF, including information on project activities, and of the Convention will be made available on the respective websites of GEF and the Convention.

Reciprocal representation

21. On a reciprocal basis, representatives of GEF will be invited to attend meetings of the Conference of the Parties and relevant subsidiary bodies as appropriate, and representatives of the Convention will be invited to attend meetings of the Council and Assembly and other relevant meetings.

Amendments

22. The present memorandum of understanding may be amended at any time by written consent between the Conference of the Parties and the Council.

Interpretation

23. If differences arise in the interpretation of the present memorandum of understanding, any issue may be referred, as appropriate, to the Conference of the Parties and the Council of GEF for consideration. The Conference of the Parties and the Council will make every effort to reach a mutually acceptable solution.

Entry into effect

24. The present memorandum of understanding will enter into effect upon approval by the Conference of the Parties and by the Council.

Termination

25. Either the Conference of the Parties or the Council may terminate the present memorandum of understanding at any time upon written notification to the other. The termination will take effect six months after such notification and will not affect the validity or duration of activities authorized before such termination.